

AMENDED IN ASSEMBLY SEPTEMBER 3, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MAY 8, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 359

Introduced by Senator Figueroa

(Principal coauthor: Assembly Member Matthews)

February 19, 2003

An act to amend Section 810 of the Business and Professions Code, ~~and to amend Section 94990 of, and to add Sections 94779.1, 94779.3, and 94779.4 to, the Education Code,~~ relating to professions and vocations, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 359, as amended, Figueroa. Professions and vocations.

Existing law provides that it is grounds for disciplinary action, including suspension or revocation of a license or certificate, for health care professionals to engage in various fraudulent activities such as presenting a false insurance claim.

This bill would require various medical services boards to convene disciplinary hearings to suspend, revoke, or take other action regarding a license or certificate if the licensee or certificate holder has been convicted of any felony involving fraud committed in conjunction with providing benefits covered by worker's compensation insurance.

~~Existing law establishes the Joint Legislative Sunset Review Committee, and specifies its duties with respect to the review of various boards and commissions. Existing law establishes the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs. Existing law requires the bureau to prepare and conduct, every 4 years commencing in 2001, certain analyses, reports, public hearings, evaluations, and determinations pursuant to the sunset review process.~~

~~This bill would instead impose that requirement every 4 years commencing in 2002. The bill would require the committee and bureau to evaluate certain provisions of law applicable to private postsecondary institutions to determine what changes are advisable to improve the effectiveness of the state's regulation of those institutions. The bill would require the bureau to objectively assess the cost of meeting its statutory obligations, determine the staffing necessary to meet those obligations, determine whether the current fee structure supports that staffing, and report that information to the Director of Consumer Affairs and the committee by October 1, 2004. The bill would require the bureau to report to the Legislature on October 1, 2003, on its progress in accomplishing corrective actions to resolve deficiencies found in specified audits. The bill would require the bureau to establish an expanded outreach program for prospective and current private postsecondary and vocational education students and high school students, subject to certain conditions.~~

~~This bill would incorporate additional changes in Section 810 of the Business and Professions Code proposed by AB 746 that would become operative only if AB 746 and this bill are both enacted and become effective on or before January 1, 2004, and this bill is enacted last.~~

~~The bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$ —majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 810 of the Business and Professions
- 2 Code is amended to read:
- 3 810. (a) It shall constitute unprofessional conduct and
- 4 grounds for disciplinary action, including suspension or
- 5 revocation of a license or certificate, for a health care professional



1 to do any of the following in connection with his or her
2 professional activities:

3 (1) Knowingly present or cause to be presented any false or
4 fraudulent claim for the payment of a loss under a contract of
5 insurance.

6 (2) Knowingly prepare, make, or subscribe any writing, with
7 intent to present or use the same, or to allow it to be presented or
8 used in support of any false or fraudulent claim.

9 (b) It shall constitute cause for revocation or suspension of a
10 license or certificate for a health care professional to engage in any
11 conduct prohibited under Section 1871.4 of the Insurance Code or
12 Section 550 of the Penal Code.

13 (c) (1) It shall constitute cause for automatic suspension of a
14 license or certificate issued pursuant to Chapter 4 (commencing
15 with Section 1600), Chapter 5 (commencing with Section 2000),
16 Chapter 6.6 (commencing with Section 2900), Chapter 7
17 (commencing with Section 3000), or Chapter 9 (commencing with
18 Section 4000), or pursuant to the Chiropractic Act or the
19 Osteopathic Act, if a licensee or certificate holder has been
20 convicted of any felony involving fraud committed by the licensee
21 or certificate holder in conjunction with providing benefits
22 covered by worker's compensation insurance. The board shall
23 convene a disciplinary hearing to determine whether or not the
24 license or certificate shall be suspended, revoked, or some other
25 disposition shall be considered, including, but not limited to,
26 revocation with the opportunity to petition for reinstatement,
27 suspension, or other limitations on the license or certificate as the
28 board deems appropriate.

29 (2) It shall constitute cause for automatic suspension and for
30 revocation of a license or certificate issued pursuant to Chapter 4
31 (commencing with Section 1600), Chapter 5 (commencing with
32 Section 2000), Chapter 6.6 (commencing with Section 2900),
33 Chapter 7 (commencing with Section 3000), or Chapter 9
34 (commencing with Section 4000), or pursuant to the Chiropractic
35 Act ~~or~~ or the Osteopathic Act, if a licensee or certificate holder has
36 more than one conviction of any felony *arising out of separate*
37 *prosecutions* involving fraud committed by the licensee or
38 certificate holder in conjunction with providing benefits covered
39 by worker's compensation insurance. The board shall convene a
40 disciplinary hearing to revoke the license or certificate and an

1 order of revocation shall be issued unless the board finds
2 mitigating circumstances to order some other disposition.

3 (3) It is the intent of the Legislature the paragraph (2) apply to
4 a licensee or certificate holder who has one or more convictions
5 prior to January 1, 2004, as provided in this subdivision.

6 (4) Nothing in this subdivision shall preclude a board from
7 suspending or revoking a license or certificate pursuant to any
8 other provision of law.

9 (5) "Board," as used in this subdivision, means the Dental
10 Board of California, the Medical Board of California, the Board
11 of Psychology, the State Board of Optometry, the California State
12 Board of Pharmacy, the Osteopathic Medical Board of California,
13 and the State Board of Chiropractic Examiners.

14 (6) "More than one conviction," as used in this subdivision,
15 means that the licensee or certificate holder has one or more
16 convictions prior to January 1, 2004, and at least one conviction
17 on or after that date, or the licensee or certificate holder has two
18 or more convictions on or after January 1, 2004. However, a
19 licensee or certificate holder who has one or more convictions
20 prior to January 1, 2004, but who has no convictions and is
21 currently licensed or holds a certificate after that date, does not
22 have "more than one conviction" for the purposes of this
23 subdivision.

24 (d) As used in this section, health care professional means any
25 person licensed or certified pursuant to this division, or licensed
26 pursuant to the Osteopathic Initiative Act, or the Chiropractic
27 Initiative Act.

28 SEC. 1.5. Section 810 of the Business and Professions Code
29 is amended to read:

30 810. (a) It shall constitute unprofessional conduct and
31 grounds for disciplinary action, including suspension or
32 revocation of a license or certificate, for a health care professional
33 to do any of the following in connection with his or her
34 professional activities:

35 (1) Knowingly present or cause to be presented any false or
36 fraudulent claim for the payment of a loss under a contract of
37 insurance.

38 (2) Knowingly prepare, make, or subscribe any writing, with
39 intent to present or use the same, or to allow it to be presented or
40 used in support of any false or fraudulent claim.



(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to *the* Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony *arising out of separate prosecutions* involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, ~~or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program~~

1 pursuant to Chapter 7 (commencing with Section 14000), or
2 Chapter 8 (commencing with Section 14200), of Part 3 of Division
3 9 of the Welfare and Institutions Code. The board shall convene a
4 disciplinary hearing to revoke the license or certificate and an
5 order of revocation shall be issued unless the board finds
6 mitigating circumstances to order some other disposition.

7 (3) It is the intent of the Legislature that paragraph (2) apply to
8 a licensee or certificate holder who has one or more convictions
9 prior to January 1, 2004, as provided in this subdivision.

10 (4) Nothing in this subdivision shall preclude a board from
11 suspending or revoking a license or certificate pursuant to any
12 other provision of law.

13 (5) "Board," as used in this subdivision, means the Dental
14 Board of California, the Medical Board of California, the Board
15 of Psychology, the State Board of Optometry, the California State
16 Board of Pharmacy, the Osteopathic Medical Board of California,
17 and the State Board of Chiropractic Examiners.

18 (6) "More than one conviction," as used in this subdivision,
19 means that the licensee or certificate holder has one or more
20 convictions prior to January 1, 2004, and at least one conviction
21 on or after that date, or the licensee or certificate holder has two
22 or more convictions on or after January 1, 2004. However, a
23 licensee or certificate holder who has one or more convictions
24 prior to January 1, 2004, but who has no convictions and is
25 currently licensed or holds a certificate after that date, does not
26 have "more than one conviction" for the purposes of this
27 subdivision.

28 (d) As used in this section, health care professional means any
29 person licensed or certified pursuant to this division, or licensed
30 pursuant to the Osteopathic Initiative Act, or the Chiropractic
31 Initiative Act.

32 ~~SEC. 2. Section 94779.1 is added to the Education Code, to~~
33 ~~read:~~

34 ~~94779.1. (a) The bureau shall work together with the staff of~~
35 ~~the Joint Legislative Sunset Review Committee, along with~~
36 ~~representatives of regulated institutions, the California~~
37 ~~Postsecondary Education Commission, the California Student Aid~~
38 ~~Commission, students, and other interested parties to revise this~~
39 ~~chapter to streamline its provisions and eliminate contradictions,~~
40 ~~redundancies, ambiguities, conflicting provisions, and~~

~~unnecessary provisions, including consideration of having accreditation by the United States Department of Education approved regional accrediting bodies replace some of the bureau's approval requirements of degree-granting institutions, educational programs, and instructors. In addition, the bureau, in conjunction with these various entities, shall evaluate the provisions of this chapter to determine what additional changes are advisable to improve the effectiveness of the state's regulation of private postsecondary and vocational education, including, but not limited to, the need to regulate out-of-state postsecondary institutions that offer educational programs to California students via the Internet and the feasibility of that regulation, and the type and timeliness of information required to be provided to the bureau.~~

~~(b) The bureau shall objectively assess the cost of meeting its statutory obligations, determine the staffing necessary to meet those obligations, determine whether the current fee structure allows for collection of revenue sufficient to support the necessary staffing, and report that information to the Director of Consumer Affairs and the Joint Legislative Sunset Review Committee by October 1, 2004.~~

~~(c) The bureau shall continue to make additional improvements to its data collection and dissemination systems so that it will provide improved reporting of information regarding the private postsecondary and vocational education sector, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, and collection of fees among other information necessary to serve the bureau's wide-ranging data management needs effectively.~~

~~SEC. 3. Section 94779.3 is added to the Education Code, to read:~~

~~94779.3. (a) The bureau shall establish an expanded outreach program for prospective and current private postsecondary and vocational education students and high school students, to provide them with information on how best to select postsecondary or vocational schools, how to enter into contracts and student enrollment agreements, how to protect themselves in the postsecondary and vocational education marketplace, and how to contact the bureau for assistance if problems arise.~~

~~(b) Notwithstanding subdivision (a), the bureau may not establish an expanded outreach program pursuant to that subdivision until (1) the bureau reports to the Director of Consumer Affairs and to the Joint Legislative Sunset Review Committee on its fee structure and revenues pursuant to subdivision (b) of Section 94779.1, (2) the Director of Consumer Affairs makes findings after submittal of that report that the bureau has sufficient revenues to meet its current obligations and that the cost of an outreach program will not further jeopardize the bureau's ability to meet those obligations, and (3) the director reports those findings to the committee.~~

~~SEC. 4. Section 94779.4 is added to the Education Code, to read:~~

~~94779.4. The bureau shall report to the Legislature, no later than October 1, 2003, on its progress in accomplishing the corrective actions necessary to resolve the deficiencies found in the audit performed by the department's Internal Audit Office, and any remaining deficiencies found in the 2000 audit by the Bureau of State Audits. In particular, the bureau shall report on the status and timeliness of its complaint and enforcement, and application and renewal processes and procedures, the condition of the Student Tuition Recovery Fund and the status of any claims thereon, the status and timeliness of its various approval or registration processes, the status and capabilities of its data processing and dissemination system, its outreach efforts to current and prospective private postsecondary and vocational education students, and any recommendations for improvement to its operations, including any recommendations regarding revisions to this chapter.~~

~~SEC. 5. Section 94990 of the Education Code is amended to read:~~

~~94990. The bureau is subject to the sunset review process conducted by the Joint Legislative Sunset Review Committee pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code. Notwithstanding that this chapter does not specify that it will become inoperative on a specified date, the analyses, reports, public hearings, evaluations, and determinations required to be prepared, conducted, and made pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code shall be prepared, conducted, and~~

1 made in 2002 and every four years thereafter as long as this chapter
2 is operative.

3 ~~SEC. 6. Section 1.5 of this bill incorporates amendments to~~
4 ~~Section 810 of the Business and Professions Code proposed by~~
5 ~~both this bill and AB 746. It shall only become operative if (1) both~~
6 ~~bills are enacted and become effective on or before January 1,~~
7 ~~2004, but this bill becomes operative first, (2) each bill amends~~
8 ~~Section 810 of the Business and Professions Code, and (3) this bill~~
9 ~~is enacted after AB 746, in which case Section 810 of the Business~~
10 ~~and Professions Code, as amended by Section 1 of this bill, shall~~
11 ~~remain operative only until the operative date of AB 746, at which~~
12 ~~time Section 1.5 of this bill shall become operative.~~

13 ~~SEC. 7. This act is an urgency statute necessary for the~~
14 ~~immediate preservation of the public peace, health, or safety~~
15 ~~within the meaning of Article IV of the Constitution and shall go~~
16 ~~into immediate effect. The facts constituting the necessity are:~~

17 ~~In order for the provisions of this act to take effect as soon as~~
18 ~~possible, it is necessary that this act take effect immediately.~~

19 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
20 *Section 810 of the Business and Professions Code proposed by*
21 *both this bill and AB 746. It shall only become operative if (1) both*
22 *bills are enacted and become effective on or before January 1,*
23 *2004, (2) each bill amends Section 810 of the Business and*
24 *Professions Code, and (3) this bill is enacted after AB 746, in*
25 *which case Section 1 of this bill shall not become operative.*